

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 284 of 2002

M/s Oriental Insurance Company Ltd.

...

Appellant.

Versus

Navin Chandra Pandey
and others.

...

Respondents.

**Coram : Hon'ble P.C. Verma, J
Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (*in short the Act*) against the judgment and Award, dated 23-8-2002, passed in M.A.C. Petition No. 1 of 2002, Navin Chandra Pandey and others Vs. Shahid Khan and 2 others, by the Motor Accident Claims Tribunal/Addl. District Judge, F.T.C. Haldwani, (Nainital) (*hereinafter referred to as the Tribunal*), whereby the learned Tribunal has awarded a sum of Rs. 15,74,000/- along with interest @ 9% per annum (excluding amount of Rs. 3,18,400/- for purposes of interest) in favour of the claimant-respondent no. 1 as against the Opposite Party No.3-appellant as mentioned in the impugned order. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the judgment and award under appeal is perverse and the impugned judgment has been assailed on the point of rash and negligent driving and also on the quantum of award.

Brief facts of the case are that the claimant-respondent no.1 met with a motor accident on 1.12.2000 at 7.30 p.m. near the forest Chauki between Haldu Chaur and Lal Kuan involving Truck

No. D.I.G.-8827 being driven rashly and negligently by its driver with the result the claimant sustained grievous injuries and consequently, the leg of the claimant was amputated at thigh level. The claimant was going to his motor bike No. UP 04C-0107 on the fateful day. Due to the injuries received by the claimant, he has become permanently disabled, hence the claim petition was preferred. The Opposite Parties contested the claim petition by filing their written statements. The appellant-Insurance Company raised the plea that the driving of the offending vehicle was not holding a valid driving licence and the accident was the result of own negligence on the part of the claimant.

Learned Tribunal framed as may as five Issues in the case. It has been held by the Tribunal that the motor accident resulting into injuries to the claimant had occurred due to rash and negligent driving by the driver of the Truck No. D.I.G.-8827. As a consequence of the injuries, one of legs of the claimant was subjected to amputation. The Tribunal has further held that the claim petition is not defective for non-joinder of owner and driver of the motor cycle. Learned Tribunal has further held that the driver of the offending vehicle was holding a valid driving licence and that the truck in question was duly insured with the appellant-Insurance Company. The learned Tribunal after taking into consideration the evidence on record found that the claimant had incurred expenditure worth Rs.3,18,433/-, which was rounded up to Rs. 3,18,400/-, towards medical treatment, operation etc. The Tribunal found that the claimant has become permanently disabled as one of his legs was amputated at the age of 30-31 years, therefore, on the basis of proved income of the claimant, i.e. Rs. 86,360/- per annum, multiplier of **16** has been applied to determine the loss of income, which came to Rs. 13,82,000/-. Compensation for loss of income has been determined for 80% permanent disability, thereby it has been held that the claimant is entitled to get Rs. **11,05,600/-** on that count. After awarding amounts of Rs. 1,50,000/- in addition to medical expenses towards different heads, the Tribunal has ultimately awarded total

compensation to the tune of Rs. 15,74,000/-, as mentioned in the impugned order, which gave rise to the present appeal.

We have heard learned counsel for the appellant, Mr. T.A.Khan, as well as learned counsel for the claimant-respondent, Mr. G.B. Pandey, and have carefully examined the entire record including the impugned judgment and award.

It has been submitted on behalf of the appellant that the findings arrived at on the point of rash and negligent driving by the driver of the offending truck by the learned Tribunal is erroneous and not based on the evidence on record. It has further been argued that the quantum of compensation awarded is highly excessive. On these two grounds alone the judgment and award under appeal has been challenged before us.

It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the case of "***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others***"[(2002) 7, *Supreme Court Cases*, 456]. In that case, it has

been observed by the Apex Court that "*even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle*". Thus, in view of the law laid down by the Apex Court reported in *(2002) 7, S.C.C. 456 (supra)*, which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

28-08-2004
RCP

(B.S. Verma, J.)

(P.C. Verma, J.)